

In re: Hargett, Jr. et al.
Serial No. 09/668,811
Filed: September 23, 2000
Page 6

Remarks

This is in response to the official action mailed March 26, 2003 (Paper No. 11). Applicants note with appreciation the courtesy of the Examiner during the recent office interview, particularly in light of the movement of the case to Examiner Merck from the office of now retired Examiner Pollard.

In the March 26 official action, independent Claim 17 was rejected as anticipated in light of U.S. Patent No. 6,136,273 to Seguin et al, and independent Claim 23 was rejected as obvious in light of Seguin, Bennett and Hughes.

In response, Applicants have submitted currently amended Claim 17 which differentiates the invention from the Seguin '273 patent by reciting that the choke cylinder has the outer diameter and the inner walls that depend from lower edge of the cap. The choke cylinder structure provides a self-sealing mechanism for the cylinder as gas pressure from a chemical reaction within the cylinder exerts pressure against the inner walls.

The recitations now appearing in Claim 17 are taken from Page 5, lines 9 through 12 of the specification, and thus do not represent new matter. Furthermore, as indicated in the Interview Summary (Paper No. 12), Claim 17 appears to define over the Seguin reference as applied to date. In particular, the closure shown in Seguin lacks any means by which it can be sealed against high internal pressure, and as is easily evident from Seguin's drawings, any pressure within the vials (14) would easily push off the lid (18) and its caps (16).

During the interview, the Examiner informally raised new matter or Rule 83 issues with respect to Claim 17. Because these positions are not yet formal, however, Applicants have respectfully refrained from any formal response to them. Applicants note, however, that should the Office decide to apply Rule 83, the Examiner should also give Applicants the opportunity to provide an additional illustration within a defined time period (37 C.F.R. §§ 1.83(a)(c)).

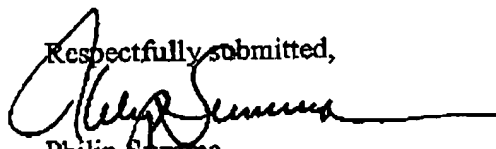
In re: Hargett, Jr. et al.
Serial No. 09/668,811
Filed: September 23, 2000
Page 7

Accordingly, Applicants respectfully request that the Examiner reconsider Claim 17 as now pending and, given that the language of Claim 17 is entirely within the language of the specification as filed, also give Applicants the opportunity to provide any additional drawing that the Examiner may believe worthwhile in meeting the requirements of Rule 83.

With respect to the § 103 rejection as applied against Claim 23, Applicants submit that no motivation exists, other than the pending claim language, to combine the cover array of Seguin with the pressure-resistant structures of Bennett and Hughes. Indeed, the Seguin patent, consistent with the typical use of test tube and block arrays, describes a device for use at below-atmospheric pressures, rather than at significant above-atmospheric pressures; e.g. Column 1 lines 15-19. Thus the Seguin patent teaches away from the Bennett and Hughes patents, making their combination logically untenable in a § 103 rejection.

During the interview, some additional references were also discussed as possibly relating to the claims, but as these have not yet been formally applied in an office action, Applicants have respectfully refrained from making any comment about them. Applicant will, of course, be prepared to discuss them in detail should they be formally applied by the Examiner.

Respectfully submitted,




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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted by facsimile to the U.S. Patent and Trademark Office, c/o Technology Center 3700, Attn: Examiner Joseph C. Merck, at facsimile number 703-872-9302 on May 6, 2003.



Philip Summa